



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 22, 2022

IN THE MATTER OF:

Appeal Board No. 622815

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective August 21, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by METHODIST CHURCH HOME FOR prior to August 21, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed March 30, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for the employer, a nursing home, as a housekeeper from February 2013 until August 20, 2021. His duties included cleaning the bathrooms, removing and emptying the garbage from the bedroom units, delivering and replenishing supplies, and responding to any calls. He received several warnings and suspensions for failing to complete his daily assignments and was informed that further incidents could lead to discharge.

On August 11, 2022, the claimant worked the 3:00 pm to 11:00 pm shift. He completed his tasks including removing trash and replenishing supplies on two

bathrooms on the second floor. Other individuals had access to the bathrooms during and after the claimant's shift. On August 12, the employer received complaints that trash had not been removed and supplies had not been replenished for two bathrooms on the second floor. The claimant was not questioned about the incident on August 13. On August 20, the employer discharged the claimant because it believed that he had not completed his tasks on August 11. During the termination meeting, the employer had not told the claimant the date of the final incident.

OPINION: The credible evidence establishes that the employer discharged the claimant because the employer concluded that he did not complete his tasks on August 11, 2022. We credit the claimant's firsthand testimony that he cleaned the two bathrooms located on the second floor during his shift and that he was not questioned about the incident on August 13, over the employer's less credible contention that the claimant admitted on August 13 that he had not cleaned the bathrooms. In resolving credibility, the employer admitted that other people had access to the bathrooms during and after the claimant's shift. In addition, TL (the director of housekeeping) contended that she inspected the bathrooms on the morning of August 12 and found them not cleaned; however, MP (the administrator) contended that the inspection occurred on the morning of August 11. Moreover, TL completed a notice of discipline stating that the incident occurred on August 4 and the inspection occurred on August 5. TL also admitted that she had not informed the claimant of the correct date of the final incident during the termination meeting. As the claimant had cleaned the two bathrooms on August 11, we conclude that the claimant lost his employment under non-disqualifying conditions.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective August 21, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to August 21, 2021 cannot be used toward the establishment of a claim for benefits, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER

